

NO.

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

In re Post-Sentence Review of:                      POST SENTENCE  
   PETITION  
DFIRSTSON FITI,

Respondent.

The Department of Corrections (Department or DOC) petitions the Court pursuant to RCW 9.94A.585(7) for review of the sentence imposed in *State v. Fiti*, Clark County Superior Court Cause No. 21-1-01282-06.

The Department brings this post-sentence petition (PSP) because the superior court failed to impose the 18-month term of community custody required by RCW 9.94A.701 when sentencing Fiti for two counts of the violent offense of second-degree assault.

**I.      QUESTION PRESENTED**

Did the superior court exceed its authority when it failed to impose 18 months of community custody under RCW 9.94A.701 when sentencing Fiti for second-degree assault?

## II. STATEMENT OF THE CASE

On June 3, 2022, Fiti pled guilty to two counts of second-degree assault, a class B felony. Exhibit 1, Judgment and Sentence, *State v. Fiti*, Clark County Superior Court Cause No. 21-1-01282-06. The superior court sentenced him on the same day to two concurrent terms of 15 months of total confinement and two concurrent terms of 12 months of community custody. *Id.* at 4-5.

The Department received Fiti's judgment and sentence on June 10, 2022, and notified the parties and the court that second-degree assault is eligible for 18 months of community custody, requesting that Fiti's sentence be amended accordingly. Exhibit 2, DOC Correspondence. The prosecutor of record responded that, "although this sentence is eligible for 18 months of community custody, it is not mandatory." *Id.* The prosecutor also indicated that the 12-month term was "part of our negotiations" and stated that the "judgment and sentence as ordered is correct." *Id.*

The Department referred the matter to the Attorney General's Office (AGO). The AGO followed up with the court and

the parties, demonstrating that RCW 9.94A.701 required the court to impose an 18-month term of community custody when sentencing an individual for the violent offense of second-degree assault. Exhibit 3, at 3, AGO Correspondence. The court held a hearing to address DOC's request but ultimately "found no grounds to amend or vacate defendant's sentence at this time." *Id.* at 1.

### **III. CERTIFICATION**

The Department certifies that it made all reasonable efforts to resolve this dispute at the superior court level after it received the judgment and sentence at issue on June 10, 2022. *See* Part II, *supra*. Because these efforts have been unsuccessful, the Department files this PSP.

### **IV. STANDARD OF REVIEW**

The Court's scope of review in a post-sentence petition "shall be limited to errors of law." RCW 9.94A.585(7). Whether a sentencing court exceeded its statutory authority under the Sentencing Reform Act of 1981, as amended, is an issue of law. *Matter of Milne*, 7 Wn. App. 2d 521, 523, 435 P.3d 311 (2019).

The Court reviews issues of law and statutory construction de novo. *Id.*

## V. ARGUMENT

### A. The Sentencing Court Exceeded Its Authority When It Failed to Impose 18 Months of Community Custody When Sentencing an Individual for a Violent Offense

RCW 9.94A.701 provides in relevant part: “A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.” RCW 9.94A.701(2); *see* RCW 9.94A.030(58)(a)(viii) (listing second-degree assault as a “violent offense”). The superior court sentenced Fiti for two counts of the violent offense of second-degree assault, but only imposed 12-month terms for those crimes. Exhibit 1 at 5 (section 4.2(A)). This was error.

RCW 9.94A.701(2) provides that the sentencing court “shall” impose an 18-month term when sentencing a violent offense. “It is well settled that the word ‘shall’ in a statute is presumptively imperative and operates to create a duty . . . . The

word ‘shall’ in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent.” *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994).

Several recent decisions have concluded that “shall” here has a mandatory meaning. *Milne*, 7 Wn. App. 2d at 524 (“RCW 9.94A.701 *requires* the sentencing court to impose . . . a term of 18 months for violent offenses . . . .”) (emphasis added); *see Matter of Thompson*, 6 Wn. App. 2d 64, 68, 429 P.3d 545 (2018) (concluding that subsections of RCW 9.94A.701 identify the circumstances “under which a sentencing court *must* impose a sentence of community custody”) (emphasis added). Thus, absent a legislative intent to the contrary, RCW 9.94A.701(2) required the superior court to sentence Fiti to 18 months of community custody.

To be sure, second-degree assault is also a crime against persons, where the statute requires a 12-month term of community custody. RCW 9.94A.411(2); RCW 9.94A.701(3)(a). In fact, almost all (serious) violent offenses are also crimes against persons. *State v. Hood*, 196 Wn. App. 127, 139, 382 P.3d 710 (2016); *see* RCW 9.94A.030(46), (58); RCW 9.94A.411(2). Thus,

(serious) violent offenses are essentially the most serious crimes against persons. Punishing more serious crimes against persons more severely by requiring longer terms of community custody is consistent with the Sentencing Reform Act's goals of proportionality and protection of the public. RCW 9.94A.010(1), (4); *see Hood*, 196 Wn. App. at 140.

Thus, after examining the tiered community custody scheme set forth in RCW 9.94A.701, Division I of this Court concluded in *Hood*:

The only reasonable reading of RCW 9.94A.701 is that it requires a term of 18 months of community custody for a violent offense that is not considered a serious violent offense, even if it is also a crime against persons. Because the potential ambiguity can be reconciled in a way that reflects the legislature's clear intent, we do not apply the rule of lenity.

*Hood*, 196 Wn. App. at 141.

Thus, even though second-degree assault is also a crime against persons—like the first-degree burglary at issue in *Hood*—the court was required to sentence Fiti to 18 months of community custody.

Finally, it may well be, as the prosecutor noted in her response to the Department, that Fiti's 12-month community custody terms were the result of plea negotiations between the parties. Exhibit 2. But statutory sentencing mandates are not bargaining chips. *Thompson*, 6 Wn. App. 2d at 67 ("The superior court can only impose a sentence that is authorized by statute. This rule applies even if the sentence is imposed pursuant to a plea agreement.").

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## **VI. CONCLUSION**

For these reasons, the Department requests that the Court remand Fiti's sentence to the superior court to impose 18 months of community custody as part of each of his second-degree assault sentences.

This document contains 1,105 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 25th day of August 2022.

ROBERT W. FERGUSON  
Attorney General

s/ Holger Sonntag  
HOLGER SONNTAG, WSBA# 55251  
Assistant Attorney General  
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## **CERTIFICATE OF SERVICE**

I certify that on the date below, I caused to be filed the POST SENTENCE PETITION with the Clerk of the Court using the electronic filing system and mailed by United States Postal Service, postage prepaid, the document to the following:

CAITLIN CUSHING, DEPUTY PROSECUTING  
ATTORNEY  
CLARK COUNTY PROSECUTOR'S OFFICE  
PO BOX 5000  
VANCOUVER, WA 98666-5000  
caitlin.cushing@clark.wa.gov

DFIRSTSON FITI, DOC #433017  
COYOTE RIDGE CORRECTIONS CENTER  
PO BOX 769  
CONNELL, WA 99326-0769

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 25th day of August 2022, at Olympia, WA.

s/ Holger Sonntag  
HOLGER SONNTAG, WSBA# 55251  
Assistant Attorney General  
Attorney for Petitioner  
Corrections Division OID #91025  
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# **EXHIBIT 1**

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AC

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JUN 03 2022 1:04

John Terry

Scott G. Weber, S7  
Clerk, Clark Co.  
\*21-1-01282-06\*

Superior Court of Washington  
County of Clark

State of Washington, Plaintiff,

vs.

DFIRSTSON FITI,  
Defendant.

SID: WA29988051

If no SID, use DOB: [REDACTED]

No. 21-1-01282-06

Felony Judgment and Sentence --  
Prison  
(FJS)

- ☒ Clerk's Action Required, para 2.1, 4.1, 4.3, 5.2, 5.3, 5.5 and 5.7  
☐ Defendant Used Motor Vehicle  
☐ Juvenile Decline ☐ Mandatory ☐ Discretionary

433017  
6/10/22

I. Hearing

- 1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

- 2.1 Current Offenses: The defendant is guilty of the following offenses, based upon

☒ guilty plea 6/3/2022 ☐ jury-verdict ☐ bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	ASSAULT IN THE SECOND DEGREE	9A.36.041(3)9A.36.021(1)(g)	FB	7/1/2021
02	ASSAULT IN THE SECOND DEGREE	9A.36.041(3)9A.36.021(1)(g)	FB	7/1/2021

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.

The jury returned a special verdict or the court made a special finding with regard to the following:

- ☒ For crime(s) charged in Count(s) 1 and 2 domestic violence as defined in RCW 10.99.020(5) was pled and proved.
- ☒ For crime(s) charged in Count(s) 1 and 2 the defendant and the victim are "family or household members" as defined in RCW 26.50.010(6).
- ☒ For crime(s) charged in Count(s) 1 and 2 the defendant and the victim are "family or household members" and "intimate partners" as defined in RCW 9A.36.041(4) and RCW 26.50.010(7).

Felony Judgment and Sentence (FJS) (Prison) (Nonsex Offender)  
(RCW 9.94A.500, .505) (WPF CR 84.0400 (6/2021))

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Exhibit 1

- ☐ The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.825, 9.94A.533.
- ☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.825, 9.94A.533.
- ☐ Count \_\_\_\_\_, is aggravated murder in the first degree committed while the defendant was ☐ under 16 years of age ☐ 16 or 20 years of age when the offense was committed.
- ☐ Count \_\_\_\_\_, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.
- ☐ Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ In count \_\_\_\_\_ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A.\_\_\_\_\_.
- ☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a **minor** in order to involve that minor in the commission of the offense. RCW 9.94A.833.
- ☐ Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- ☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY** ☐ In Count \_\_\_\_\_, the defendant had (number of) \_\_\_\_\_ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.
- ☐ Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- ☐ In Count \_\_\_\_\_ the defendant has been convicted of **assaulting a law enforcement officer** or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- ☐ Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- ☐ The defendant has a **substance use disorder** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- ☐ In Count \_\_\_\_\_, assault in the 1<sup>st</sup> degree (RCW 9A.36.011) or assault of a child in the 1<sup>st</sup> degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- ☐ Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score. RCW 9.94A.589.
- ☐ **Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

*Crime*

*Cause Number*

*Court (county & state)*

*DV\**  
*Yes*

1. |

\*DV: Domestic Violence was pled and proved

- ☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

## 2.2 Criminal History (RCW 9.94A.525):

Crime	Date of Crime	Date of Sentence	Sentencing Court (County & State)	A or J Adult, Juv.	Type of Crime	DV* Yes
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1

See attached criminal history

\*DV: Domestic Violence was pled and proved

- ☒ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions for \_\_\_\_\_ are one offense for purposes of determining the offender score (RCW 9.94A.525)
- ☐ The prior convictions for \_\_\_\_\_ are not counted as points but as enhancements pursuant to RCW 46.61.520.
- ☐ The defendant has previously had DNA collected in this state pursuant to a previous conviction. RCW 43.43.7541.

## 2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
01	3	IV	13 MONTHS to 17 MONTHS		13 MONTHS to 17 MONTHS	10 YEARS
02	3	IV	13 MONTHS to 17 MONTHS		13 MONTHS to 17 MONTHS	10 YEARS

- \* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.
- ☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: \_\_\_\_\_.

## 2.4 ☐ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

- ☐ below the standard range for Count(s) \_\_\_\_\_.
- ☐ above the standard range for Count(s) \_\_\_\_\_.
- ☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.
- ☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.
- ☐ within the standard range for Count(s) \_\_\_\_\_, but served consecutively to Count(s) \_\_\_\_\_.
- Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

**2.5 Ability to Pay Legal Financial Obligations.** The court makes the following specific findings:

- ☒ The defendant is "indigent" pursuant to RCW 10.101.010(3)(a)-(c) because:
- ☐ The defendant receives public assistance as defined in RCW 10.101.010(3)(a).
  - ☐ The defendant is involuntarily committed to a public mental health facility.
  - ☒ The defendant receives an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.
- ☐ The defendant is not "indigent" as defined in RCW 10.101.010(3)(a)-(c) and therefore the court has considered the defendant's financial resources, and the nature of the burden that payment of costs will impose in determining the amount and method of payment for costs imposed by this judgment.
- ☐ The following extraordinary circumstances exist that make restitution inappropriate. (RCW 9.94A.753):
- ☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

- 2.6** ☐ **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.
- ☐ The court considered the following factors:
- ☐ the defendant's criminal history.
  - ☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.
  - ☐ evidence of the defendant's propensity for violence that would likely endanger persons.
  - ☐ other: \_\_\_\_\_
- ☐ The court decided the defendant ☐ should ☐ should not register as a felony firearm offender.

**III. Judgment**

- 3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1.
- 3.2 ☐ The court *dismisses* Counts \_\_\_\_\_ in the charging document.

**IV. Sentence and Order**

*It is ordered:*

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

- (a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

☐ The defendant was under 18 at the time of the offense and shall be initially placed in the custody of the Department of Children, Youth, and Families (DCYF):

\_\_\_\_ 15 \_\_\_\_ months on Count 01                      \_\_\_\_ 15 \_\_\_\_ months on Count 02

☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of

☐ The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for ☐ firearm ☐ deadly weapon ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present.

Actual number of months of total confinement ordered is: \_\_\_\_ 15 Months \_\_\_\_.

(b) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

☐ The defendant was under 18 at the time of the offense and shall be initially placed in the custody of the Department of Children, Youth, and Families (DCYF):

Count \_\_\_\_\_ minimum term: \_\_\_\_\_ maximum term: Life

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

(c) **Credit for Time Served.** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(d) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community custody see RCW 9.94A.701, RCW 10.95.030(3))

(A) The defendant shall be on community custody for the longer of:

Count(s) \_\_\_\_\_, 36 months for Serious Violent Offenses

Count(s) \_\_\_\_\_, 18 months for Violent Offenses

Count(s) 01.02, 12 months (for crimes against a person, drug offenses, offenses involving the unlawful possession of a firearm by a street gang member or associate, or a felony failure to register under RCW 9A.44.132(1) that is a first felony violation).

Note: combined term of confinement and community custody for any particular offense cannot exceed the statutory maximum. RCW 9.94A.701.

Community custody on all counts shall be served concurrently, except for the following counts which shall be served consecutively: \_\_\_\_\_

The community custody terms of this sentence shall run consecutively with the community custody term in the following cause numbers (see RCW 9.94A.589(2)(a)): \_\_\_\_\_

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; and (9) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and 706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody.

- ☐ The defendant shall pay supervision fees as determined by the DOC.  
☐ The defendant is indigent and the payment of supervision fees is waived.

The court orders that during the period of supervision the defendant shall:

- ☒ not possess or consume alcohol.  
☒ not possess or consume controlled substances, including marijuana, without a valid prescription.  
☒ have no contact with: M [REDACTED] W [REDACTED]  
☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit:  
☐ not serve in any paid or volunteer capacity where he or she has control or supervision of minors under 13 years of age.  
☐ participate in the following crime-related treatment or counseling services:  
☒ undergo an evaluation for treatment for ☐ domestic violence ☒ substance use disorder  
☐ mental health ☐ anger management, and fully comply with all recommended treatment.  
☐ comply with the following crime-related prohibitions:  
☐ Other conditions:

Court Ordered Treatment: If any court orders mental health or substance use disorder treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(C) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of any crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.  
(ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.  
(iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

**4.3 Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASSCODE

PCV	\$ 500.00	Victim assessment (mandatory)	RCW 7.68.035
PDV	\$	Domestic Violence assessment	RCW 10.99.080
	\$	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.410

ES

**FRC** \$ ~~200.00~~ Criminal filing fee (mandatory, however waive if Court found defendant to be indigent pursuant to RCW 10.101.010(3)(a)-(c) in section 2.5 above). RCW 36.18.020.

**CRC** \$ \_\_\_\_\_ Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190

Witness costs \$ \_\_\_\_\_ WFR

Sheriff service fees \$ \_\_\_\_\_ SFR/SFS/SFW/WRF

Jury demand fee \$ \_\_\_\_\_ JFR

Extradition costs \$ \_\_\_\_\_ EXT

Other \$ \_\_\_\_\_

**PUB** \$ \_\_\_\_\_ Fees for court appointed attorney RCW 9.94A.760

**WFR** \$ \_\_\_\_\_ Court appointed defense expert and other defense costs RCW 9.94A.760

**FCM/MTB** \$ \_\_\_\_\_ ☐ Fine RCW 9A.20.021

**FCM/MTB** \$ \_\_\_\_\_ ☐ VUCSA Fine 69.50.430

☐ deferred due to indigency

**CDF/LDI/FCB** \$ \_\_\_\_\_ Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF) RCW 9.94A.760

**NTF/SAD/SDI** \$ \_\_\_\_\_ DUI fines, fees and assessments

**CLF** \$ \_\_\_\_\_ Crime lab fee ☐ suspended due to indigency RCW 43.43.690

\$ 100.00 DNA collection fee, (mandatory unless DNA previously collected by prior conviction in this state). RCW 43.43.7541

**FPV** \$ \_\_\_\_\_ Specialized forest products RCW 76.48.140

\$ \_\_\_\_\_ Other fines or costs for: \_\_\_\_\_

**DEF** \$ \_\_\_\_\_ Emergency response costs (\$1000 maximum, \$2,500 max. effective Aug. 1, 2012.) RCW 38.52.430

**RTN/RJN** \$ To Be Set Restitution to: \_\_\_\_\_  
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ \_\_\_\_\_ Total RCW 9.94A.760

☒ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor.

☐ is scheduled for \_\_\_\_\_ (date).

☐ The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_

☐ Restitution Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

RJN	Name of other defendant	Cause Number	Victim's name	Amount-\$

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760.

☐ All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ \_\_\_\_\_ per month commencing \_\_\_\_\_.  
RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760.

☐ The court orders the defendant to pay costs of incarceration at the rate of \$ \_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.)

The restitution obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. No interest shall accrue on non-restitution obligations imposed in this judgment. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

☒ The facility where the defendant serves the term of confinement shall be responsible for obtaining the sample as part of the defendant's intake process or as soon as practicable.

☐ If further confinement is not ordered,

☐ The defendant shall report to \_\_\_\_\_ (law enforcement agency) by \_\_\_\_\_ (date/time) to provide a biological sample.

☐ The defendant shall immediately provide a biological sample to the local police department or sheriff's office before leaving the courtroom.

Failure to provide a biological sample is a gross misdemeanor.

**4.5 No Contact:**

☒ The defendant shall not have contact with M \_\_\_\_\_ W \_\_\_\_\_ including, but not limited to, personal, verbal, telephonic, written or contact through a third party until 06/03/2032 (which does not exceed the maximum statutory sentence).

☒ The defendant is excluded or prohibited from coming within:

☐ 500 feet ☐ 830 feet ☒ 1000 feet of:

☒ M \_\_\_\_\_ W \_\_\_\_\_ (name of protected person(s))'s

☒ home/ residence ☒ work place ☒ school

☒ (other location(s)) PERSON \_\_\_\_\_

☐ other location \_\_\_\_\_

until 06/03/2032 (which does not exceed the maximum statutory sentence).

☒ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

**4.6 Other:**

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**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

**4.8 Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions.

**V. Notices and Signatures**

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100, RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Community Custody Violation.**

(a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).

(b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).

**5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.

**5.5b ☐ Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

**5.6 Reserved**

5.7 ☐ **Department of Licensing Notice:** The court finds that Count \_\_\_\_\_ is a felony in the commission of which a motor vehicle was used. **Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information) (Check all that apply):**

☐ Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of \_\_\_\_.

☐ No BAC test result.

☐ BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.

☐ Drug Related. The defendant was under the influence of or affected by any drug.

☐ THC level was \_\_\_\_\_ within two hours after driving.

☐ Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: ☐ Commercial Veh. ☐ 16 Passenger Veh. ☐ Hazmat Veh.

5.8 ☐ **Department of Licensing Notice – Defendant under age 21 only.**

Count \_\_\_\_\_ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense OR (b) a violation under RCW 9A.10.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense OR (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, AND the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

**Clerk's Action**—The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265

5.9 Other: \_\_\_\_\_

Done in Open Court and in the presence of the defendant this date: 6/3/2022

Emily Sheldrick  
Judge/Print Name:

Caitlin Cushing  
Deputy Prosecuting Attorney  
WSBA No. 45261  
Print Name: Caitlin M. Cushing

Daniel C. Lewis  
Attorney for Defendant  
WSBA No. 41337 51645  
Print Name: John C. Terry  
Daniel C. Lewis

DFIRSTSON  
Defendant  
Print Name:  
DFIRSTSON FITI

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: \_\_\_\_\_

*D. Firstson*

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the \_\_\_\_\_ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington on (date): \_\_\_\_\_

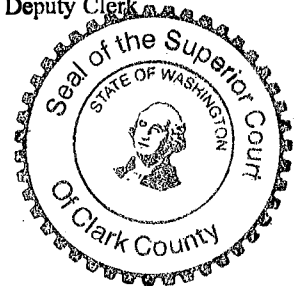
Interpreter \_\_\_\_\_

Print Name \_\_\_\_\_

I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: 6.3.22

Clerk of the Court of said county and state, by: Andrea Emay, Deputy Clerk



**Identification of the Defendant**

DFIRSTSON FITI

21-1-01282-06

SID No: WA29988051

Date of Birth: [REDACTED]

FBI No. 93HL39PA4

Local ID No. 242551

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, DOB:

Race: A

Ethnicity:

Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, Indira Esmy

Dated: 6.3.22



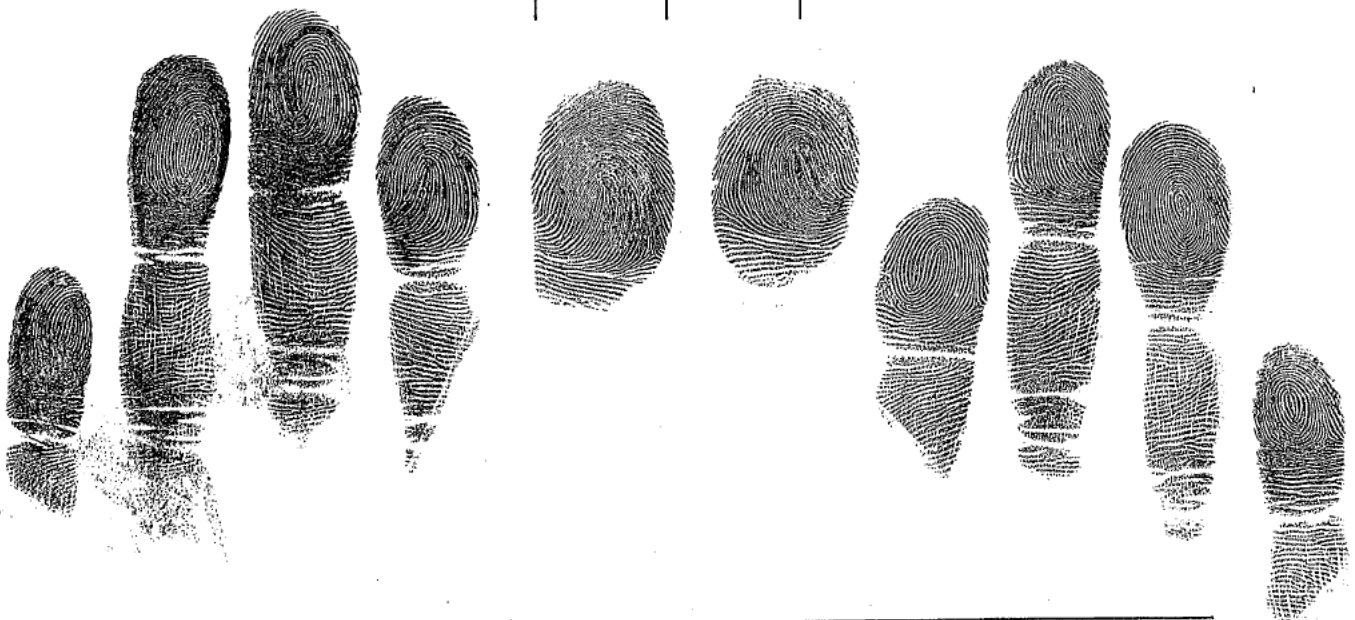
The defendant's signature: DFIRSTSON

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

DFIRSTSON FITI,

Defendant.

SID: WA29988051

DOB: [REDACTED]

NO. 21-1-01282-06

**WARRANT OF COMMITMENT TO STATE  
OF WASHINGTON DEPARTMENT OF  
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington, ☐ Department of Children, Youth, and Families (DCYF):

**GREETING:**

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
01	ASSAULT IN THE SECOND DEGREE	9A.36.041(3)/9A.36.021(1)(g)	7/1/2021
02	ASSAULT IN THE SECOND DEGREE	9A.36.041(3)/9A.36.021(1)(g)	7/1/2021
03	HARASSMENT GROSS MISDEMEANOR	9A.36.041(3)/9A.46.020(1)(2)(a) /9A.46.020(1)(a)(i)/9A.46.020(1)(b)	7/1/2021

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.02, ☐ and the defendant was under 18 at the time of the offense and shall initially be placed in the custody of the Department of Children, Youth and Families (DCYF), all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, ☐ Department of Children, Youth, and Families, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of

**WARRANT OF COMMITMENT**

Page 1 of 2

the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections and ☐ Department of Children, Youth, and Families, for a term of confinement of:

COUNT	CRIME	TERM
01	ASSAULT IN THE SECOND DEGREE	15 Months
02	ASSAULT IN THE SECOND DEGREE	15 Months
03	HARASSMENT - GROSS MISDEMEANOR	0 Days

These terms shall be served concurrently to each other unless specified herein:

Department of Corrections to determine any credit for time served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

*Emily Sheldrick*

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 6/3/22

SCOTT G. WEBER, Clerk of the  
Clark County Superior Court

By:

*Andrea Esmay*

Deputy



# **EXHIBIT 2**

**From:** [Caitlin Cushing](#)  
**To:** [DOC WCC Sentence Structure](#); [Leeann Kunze](#); [dcommisa@mbavancouverlaw.com](mailto:dcommisa@mbavancouverlaw.com)  
**Subject:** RE: Dfirstson, Fiti DOC# 433017 (AA-2110128206-Clark-CCP)-First Notification – Please Respond – TIME SENSITIVE  
**Date:** Wednesday, June 29, 2022 8:48:59 AM

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External Email

Hi Ms. Paz, although this sentence is eligible for 18 months of community custody, it is not mandatory. 12 months community custody was part of our negotiations. The judgement and sentence as ordered is correct.

Let me know if you have any other questions.

Caitlin

Caitlin M. Cushing

Deputy Prosecuting Attorney

Major Crimes Unit

Clark County Prosecuting Attorney's Office

(564) 397 4744

[caitlin.cushing@clark.wa.gov](mailto:caitlin.cushing@clark.wa.gov)

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**From:** DOC WCC Sentence Structure <[DOCWCCSentenceStructure@DOC1.WA.GOV](mailto:DOCWCCSentenceStructure@DOC1.WA.GOV)>

**Sent:** Wednesday, June 29, 2022 8:34 AM

**To:** Leeann Kunze <[Leeann.Kunze@clark.wa.gov](mailto:Leeann.Kunze@clark.wa.gov)>; Caitlin Cushing <[Caitlin.Cushing@clark.wa.gov](mailto:Caitlin.Cushing@clark.wa.gov)>; [dcommisa@mbavancouverlaw.com](mailto:dcommisa@mbavancouverlaw.com)

**Subject:** Dfirstson, Fiti DOC# 433017 (AA-2110128206-Clark-CCP)-First Notification – Please Respond – TIME SENSITIVE

**Importance:** High

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Judicial Officer Emily Sheldrick, Assigned Prosecutor Caitlin Cushing, Counsel David Commisa,

Mr. Fiti's judgment and sentence was received by the Department on 06/10/2022. Upon review, the Department discovered that the sentence requires correction due to the following perceived error:

Count 1 & 2, Assault in the Second Degree is eligible for 18 months of community custody but 12 months was ordered on the judgment and sentence.

We respectfully request that you please respond within 14 days (by: 07/13/2022). Please advise as to whether the Prosecuting Attorney's Office agrees with the Department's analysis and will have the judgment and sentence amended. If your office disagrees and/or will not move for an amended judgment and sentence, please provide us a response by the above date. Your Order Amending the Judgment and/or response if your office disagrees should be sent to [DOC\\_Amended\\_Orders@doc1.wa.gov](mailto:DOC_Amended_Orders@doc1.wa.gov).

If no response is received and/or an order amending: updating the length of community custody to 18 months the sentence will be loaded with: 12 months community custody.

If no response is received by 07/13/2022 the Department will refer this judgment and sentence along with any correspondence to the Attorney General's Office. The Attorney General's Office will then review the case and may file a post-sentence petition.

We are looking forward to hearing from you.

Exhibit 2

Shannon Paz  
CRT Sentence Structure Lead  
Washington Corrections Center  
Phone: 360-426-4433 ext 5513  
EMAIL: [DOCWCCSentenceStructure@DOC1.WA.GOV](mailto:DOCWCCSentenceStructure@DOC1.WA.GOV)

# **EXHIBIT 3**

## Sonntag, Holger (ATG)

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**From:** Sonntag, Holger (ATG)  
**Sent:** Thursday, August 18, 2022 5:10 PM  
**To:** Leeann Kunze  
**Cc:** amcclain@mbavancouverlaw.com; Caitlin Cushing  
**Subject:** RE: Follow up re State v. Fiti, 21-1-01282-06

Thank you very much for the update. I'll move forward with the petition in the court of appeals then.

Have a good evening.

---

**From:** Leeann Kunze <Leeann.Kunze@clark.wa.gov>  
**Sent:** Thursday, August 18, 2022 4:50 PM  
**To:** Sonntag, Holger (ATG) <holger.sonntag@atg.wa.gov>  
**Cc:** amcclain@mbavancouverlaw.com; Caitlin Cushing <Caitlin.Cushing@clark.wa.gov>  
**Subject:** RE: Follow up re State v. Fiti, 21-1-01282-06

[EXTERNAL]

Judge found no grounds to amend or vacate defendant's sentence at this time. If a motion is filed and briefing done, we will readdress the issue.

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**From:** Sonntag, Holger (ATG) <[holger.sonntag@atg.wa.gov](mailto:holger.sonntag@atg.wa.gov)>  
**Sent:** Monday, August 8, 2022 8:57 AM  
**To:** Leeann Kunze <[Leeann.Kunze@clark.wa.gov](mailto:Leeann.Kunze@clark.wa.gov)>  
**Subject:** RE: Follow up re State v. Fiti, 21-1-01282-06

Thank you for letting me know, Ms. Kunze.

I do not think my presence will be necessary. But once the Court enters the order amending Mr. Fiti's judgment and sentence, I would appreciate it if you could send me a copy so I can pass it on to DOC and Mr. Fiti's sentence gets corrected right away.

Best,  
Holger

---

**From:** Leeann Kunze <[Leeann.Kunze@clark.wa.gov](mailto:Leeann.Kunze@clark.wa.gov)>  
**Sent:** Thursday, August 4, 2022 10:29 AM  
**To:** Sonntag, Holger (ATG) <[holger.sonntag@atg.wa.gov](mailto:holger.sonntag@atg.wa.gov)>  
**Subject:** RE: Follow up re State v. Fiti, 21-1-01282-06

[EXTERNAL]

I have this set for August 18<sup>th</sup> at 3:00. If you'd like to participate or listen in, let me know and I can forward you the zoom link.

Exhibit 3

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**From:** Sonntag, Holger (ATG) <[holger.sonntag@atg.wa.gov](mailto:holger.sonntag@atg.wa.gov)>  
**Sent:** Tuesday, July 19, 2022 4:43 PM  
**To:** Caitlin Cushing <[Caitlin.Cushing@clark.wa.gov](mailto:Caitlin.Cushing@clark.wa.gov)>  
**Cc:** Leeann Kunze <[Leeann.Kunze@clark.wa.gov](mailto:Leeann.Kunze@clark.wa.gov)>; [dcommisa@mbavancouverlaw.com](mailto:dcommisa@mbavancouverlaw.com)  
**Subject:** RE: Follow up re State v. Fiti, 21-1-01282-06

Hi Caitlin,

Thank you for your response and questions.

I'm happy to explain: First, DOC is bound to execute the judgment and sentence, no matter how erroneous the sentence, and may not unilaterally correct it. That is why Ms. Paz noted that they would "load" the 12 month for Mr. Fiti, unless and until they receive a different order from the sentencing court. Second, DOC's predicament of having to execute even unlawful sentences is what prompted the legislature to authorize DOC to file post-sentence petitions under RCW 9.94A.585(7) to get those sentences corrected by way of a remand from the court of appeal, if the sentencing court is unwilling to do so based on an informal request by DOC or our office. *See Matter of Davis*, 67 Wn. App. 1, 8-9 (1992).

Let me know how you intend to proceed.

Best,  
Holger

---

**From:** Caitlin Cushing <[Caitlin.Cushing@clark.wa.gov](mailto:Caitlin.Cushing@clark.wa.gov)>  
**Sent:** Tuesday, July 19, 2022 4:20 PM  
**To:** Sonntag, Holger (ATG) <[holger.sonntag@atg.wa.gov](mailto:holger.sonntag@atg.wa.gov)>; Leeann Kunze <[Leeann.Kunze@clark.wa.gov](mailto:Leeann.Kunze@clark.wa.gov)>; [dcommisa@mbavancouverlaw.com](mailto:dcommisa@mbavancouverlaw.com)  
**Subject:** RE: Follow up re State v. Fiti, 21-1-01282-06

[EXTERNAL]

Mr./Ms. Sonntag,

Thank you for your analysis. I am confused at the position of DOC given this was the language of the original email from Ms. Paz:

"If no response is received and/or an order amending: updating the length of community custody to 18 months the sentence will be loaded with: 12 months community custody."

Please note that Ms. Paz indicated if no response was provided the length of community custody would be "loaded" with 12 months community custody. If DOC could input 12 months community custody as they stated without a response, why are they not accepting 12 months community custody simply because we responded? I have attached Ms. Paz' email.

Thank you,

Caitlin

Caitlin M. Cushing

Deputy Prosecuting Attorney  
Major Crimes Unit  
Clark County Prosecuting Attorney's Office  
(564) 397 4744  
[caitlin.cushing@clark.wa.gov](mailto:caitlin.cushing@clark.wa.gov)

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**From:** Sonntag, Holger (ATG) <[holger.sonntag@atg.wa.gov](mailto:holger.sonntag@atg.wa.gov)>  
**Sent:** Wednesday, July 13, 2022 2:07 PM  
**To:** Leeann Kunze <[Leeann.Kunze@clark.wa.gov](mailto:Leeann.Kunze@clark.wa.gov)>; Caitlin Cushing <[Caitlin.Cushing@clark.wa.gov](mailto:Caitlin.Cushing@clark.wa.gov)>;  
[dcommisa@mbavancouverlaw.com](mailto:dcommisa@mbavancouverlaw.com)  
**Subject:** Follow up re State v. Fiti, 21-1-01282-06  
**Importance:** High

**CAUTION:** This email originated from outside of Clark County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Judge Sheldrick, DPA Cushing, and Attorney Commisa,

I write to follow up on the attached correspondence initiated by the Department of Corrections regarding Mr. Fiti's terms of community custody the Court imposed under the cause number referenced above. I have also attached the judgment and sentence for your reference.

As the Department indicated in its email, Mr. Fiti's crimes of conviction—second-degree assault—required the Court to impose 18 months of community custody under RCW 9.94A.701: "A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense." RCW 9.94A.701(2); see RCW 9.94A.030(58)(a)(viii) (listing second-degree assault as a "violent offense"). The Court, however, only imposed 12-month terms for those crimes. J&S at 5 (section 4.2(A)). This should be corrected.

DPA Cushing was kind enough to respond to the Department's email and noted that while the crime was "eligible for 18 months of community custody," this term was "not mandatory" and that "12 months community custody was part of our negotiations." She concluded that the sentence is correct as ordered.

I respectfully disagree. RCW 9.94A.701(2) clearly contains a mandatory word, "shall." I am not aware of any appellate decision that interprets this word in RCW 9.94A.701 as merely making a recommendation or merely providing non-binding authorization to the sentencing court. In fact, I am aware of several recent decisions that interpret it as having a mandatory meaning. *Matter of Milne*, 7 Wn. App. 2d 521, 524 (2019) ("RCW 9.94A.701 requires the sentencing court to impose . . . a term of 18 months for violent offenses . . .") (emphasis added); *Matter of Thompson*, 6 Wn. App. 2d 64, 68 (2018) (concluding that subsections of RCW 9.94A.701 identify the circumstances "under which a sentencing court must impose a sentence of community custody") (emphasis added); *State v. Hood*, 196 Wn. App. 127, 141 (2016) ("The only reasonable reading of RCW 9.94A.701 is that it requires a term of 18 months of community custody for a violent offense that is not considered a serious violent offense, even if it is also a crime against persons. Because the potential ambiguity can be reconciled in a way that reflects the legislature's clear intent, we do not apply the rule of lenity.") (emphasis added).

Plea agreements are not a way to set aside clear sentencing mandates set forth in the RCW. *Thompson*, 6 Wn. App. 2d at 67 ("The superior court can only impose a sentence that is authorized by statute. This rule applies even if the sentence is imposed pursuant to a plea agreement.").

Please let me know if you agree with this analysis and if/how you intend to correct Mr. Fiti's community custody terms pursuant to RCW 9.94A.701. Please also let me know if you have any questions or concerns.

Respectfully,

**Holger Sonntag**

Assistant Attorney General

Corrections Division

Washington State Attorney General's Office

P.O. Box 40116

Olympia, WA 98504-0116

Voice (360) 586-5125 / Fax (360) 586-1319

[holger.sonntag@atg.wa.gov](mailto:holger.sonntag@atg.wa.gov)

<< File: DOCemail correspondence.pdf >> << File: J&S.pdf >>

**CORRECTIONS DIVISION ATTORNEY GENERAL'S OFFICE**

**August 25, 2022 - 9:21 AM**

**Filing Post Sentence Review**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** Case Initiation  
**Trial Court Case Title:** Fiti, Dfirstson  
**Trial Court Case Number:** 21-1-01282-06 (JIS Number: 21-1-01282-1)  
**Trial Court County:** Clark Superior Court  
**Signing Judge:**  
**Judgment Date:**

**The following documents have been uploaded:**

- PSR\_Post\_Sentence\_Review\_20220825091830D2675730\_4852.pdf  
This File Contains:  
Post Sentence Review  
*The Original File Name was PSP.pdf*

**A copy of the uploaded files will be sent to:**

- caitlin.cushing@clark.wa.gov

**Comments:**

---

Sender Name: Erin Stallings - Email: erin.stallings@atg.wa.gov

**Filing on Behalf of:** Holger Kurt Sonntag - Email: holger.sonntag@atg.wa.gov (Alternate Email: )

Address:  
Corrections Division  
PO Box 40116  
Olympia, WA, 98104-0116  
Phone: (360) 586-1445

**Note: The Filing Id is 20220825091830D2675730**